

NO. 20,946

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

□

EDWIN JOHNSON,

Appellant,

v.

UNITED STATES OF AMERICA,

Appellee.

APPELLEE'S REPLY BRIEF

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INDEX

	<u>Pages</u>
JURISDICTION	1
STATEMENT OF THE FACTS	2
CONCLUSION	5
CERTIFICATE	6
APPENDIX I	

AUTHORITIES CITED

Berenyi v. District Director, I&NS, 385 US 630 (1967)	5
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JURISDICTION

The appeal in the above case is from the Order of the District Court of December 27, 1965, which denied the Petition for Naturalization No. 13608 of Edwin Charles Samuel Johnson. The reason for the denial was lack of good moral character.

STATEMENT OF THE FACTS

The appellant was born in England on February 9, 1924. He became a resident and citizen of Canada, and entered the United States as a lawful permanent resident on November 6, 1957. His petition for naturalization was filed March 28, 1963.

Subsequent to the filing of the petition for naturalization, appellant was arrested and charged with violation of §285 of the California Penal Code, incest, a felony. The charged victim of the incestuous act was his daughter. On February 17, 1964, on a plea of guilty, he was convicted of this crime in the Superior Court of the State of California in and for the County of Yolo, at Woodland. On March 16, 1964, appellant was ordered imprisoned in the State Prison of California for the term provided by law (one to fifty years). He was received by the California Department of Corrections March 18, 1964, and at the time of filing his application for naturalization he was serving the sentence. Certified

copies of the indictment, judgment and sentence are included in the transcript of record which was filed and docketed in this Court on May 5, 1966.

On July 7, 1966, Judge Sweigert of the United States District Court for the Northern District of California, on appellant's petition for a writ of habeas corpus, Civil Number 43950, set aside the judgment and sentence for the crime of incest in violation of §285 of the California Penal Code, and ordered the writ of habeas corpus to issue unless the State of California put appellant to its charges again within sixty days from the date of the order.

Within the time specified in the aforesaid order, the State of California proceeded again to trial in the Superior Court of the State of California, in and for the County of Yolo, in Case Number 2883, on appellant's plea of not guilty, before a jury. On February 17, 1967, he was convicted by the jury of the crime

of incest in violation of §285 of the Penal Code of the State of California. Appellant was not adjudged a habitual criminal within the meaning of subdivision "A" or "B" of §644 of the Penal Code. It was therefore ordered, adjudged and decreed that appellant be punished by imprisonment in the State Prison of the State of California for the term approved by law. The Sheriff of the County of Yolo was commanded to deliver appellant into the custody of the Director of Corrections at California Medical Facility at Vacaville, California. An exemplified copy of the indictment and of the abstract of judgment is attached hereto as Appendix I.

Appellant filed a notice of appeal on February 17, 1967 from the said conviction in the Superior Court of the State of California in and for the County of Yolo, No. 2883. The transcript in the case was received by the District Court of Appeals of the Third District of the State of California on March 21; numbered 3 Crim. 4447.

The opening brief was filed on May 23, 1967. The appellant is apparently currently at liberty on bond.

Section 316(a) of the Immigration and Nationality Act of 1952 (8 USC 1427(a)) requires that an alien who applies for naturalization as a citizen of the United States must establish that during the five years preceding the filing of his petition he has been a person of good moral character.

Berenyi v. District Director,
I&NS, 385 US 630 (1967).

CONCLUSION

It is respectfully submitted that on his plea of guilty to the charge in the indictment on the crime of incest, in violation of §285 of the Penal Code of the State of California, and his conviction by a jury on his plea of not guilty of the same crime, appellant has failed to satisfy the requirements of §316(a) of the

Immigration and Nationality Act, to-wit, that he has been and still is a person of good moral character, and that the appeal should be dismissed.

Respectfully submitted,

CECIL F. POOLE
United States Attorney

By: CHARLES ELMER COLLETT
Chief Assistant United States Attorney

Attorneys for Appellee.

DATED: June 8, 1967.

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CERTIFICATE

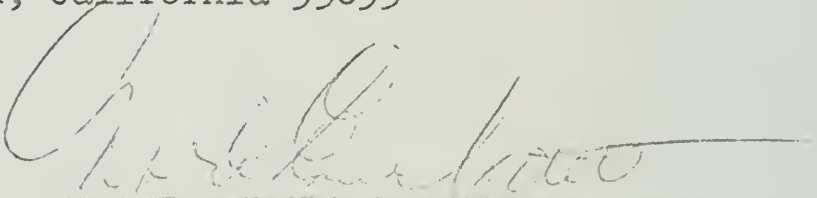
I certify that, in connection with the preparation of this brief, I have examined Rules 18, 19 and 39 of the United States Court of Appeals for the Ninth Circuit, and that, in my opinion, the foregoing brief is in full compliance with those rules.

CHARLES ELMER COLLETT
Chief Assistant United States Attorney

CERTIFICATE OF SERVICE BY MAIL

I hereby certify that a copy of the foregoing Appellee's Brief was served upon the Appellant by depositing the same in the United States mail at 450 Golden Gate Avenue, San Francisco, California, addressed to:

Mr. Edwin Johnson
Post Office Box 179
Woodland, California 95695



CHARLES ELMER COLLETT

Chief Assistant United States Attorney

Dated: June 8, 1967.

STATE OF CALIFORNIA, } ss.
COUNTY OF YOLO.

I, LAWRENCE P. HEMICAN, County Clerk of the County of Yolo, State of California, and ex-officio Clerk of the Superior Court thereof, the same being a Court of Record having a Clerk and a Seal, and having jurisdiction over Criminal matters do hereby certify that I have compared the foregoing copies with the original INDICTMENT and ABSTRACT OF JUDGMENT re:

THE PEOPLE OF THE STATE OF CALIFORNIA, Plaintiff,
vs. No. 2883

EDWIN C. S. JOHNSON, Defendant,

filed in my office on the dates endorsed thereon, and that the same are a full, true and correct copies of the originals, and the whole thereof, as the same remain of record and on file in my office.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of said Court this 3rd day of May, 1967.

By LAWRENCE P. HEMICAN, Clerk
Rosemary G. Hurlhey, Deputy

--o0o--

STATE OF CALIFORNIA, } ss.
COUNTY OF YOLO.

I, JAMES C. KERNERTON, Judge of the Superior Court of the State of California, in and for the County of Yolo, the same being a Court of Record having a Clerk and a Seal, and having jurisdiction over Criminal matters, as such Judge, do hereby certify that LAWRENCE P. HEMICAN is the duly elected, qualified and acting Clerk of said Court, that ROSEMARY G. HURLHEY is the duly appointed, qualified and acting Deputy County Clerk of said County, and that the above Certificate of Attestation is in due form according to the laws of the State of California, and entitled to full faith and credit, and that the signature of said Deputy County Clerk for said Certificate is genuine.

IN WITNESS WHEREOF, I have hereunto set my hand and caused the seal of said Court to be affixed this 3rd day of May, 1967.

JAMES C. KERNERTON, Judge of the Superior Court

ATTEST: LAWRENCE P. HEMICAN, Clerk

By Rosemary G. Hurlhey, Deputy

--o0o--

STATE OF CALIFORNIA, } ss.
COUNTY OF YOLO.

I, LAWRENCE P. HEMICAN, County Clerk of the County of Yolo, State of California, and ex-officio-Clerk of the Superior Court thereof, do hereby certify that the Honorable JAMES C. KERNERTON who has signed the foregoing Certificate of Attestation, is the duly elected, qualified and acting Judge of said Court, and that the signature of said Judge to said certificate is genuine.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of said Court this 3rd day of May, 1967.

LAWRENCE P. HEMICAN, Clerk

EXHIBIT 3 COPY FOR OFFICIALS

ROSEMARY G. HURLHEY, Deputy

EXHIBIT 3



Section 644 of the Penal Code; and the defendant, LAURENCE P. JAMES, a habitual criminal in accordance with Sub-division (c) of that Section.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that the said defendant be punished by imprisonment in the State Prison of the State of California for the term provided by law, and that he be remanded to the Sheriff of the County of YOLO and by him delivered to the Director of Corrections of the State of California at the place hereinafter designated.

and in respect to any prior uncompleted sentence (s) as follows:

(NOTE: Wherever sentence or sentences are to be suspended from other jurisdictional)

To the Sheriff of the County of YOLO and to the Director of Corrections:

Pursuant to the aforesaid judgment, this is to command you, the said Sheriff, to deliver the above-named defendant into the custody of the Director of Corrections at San Francisco, California at your earliest convenience.

Witness my hand and seal of said court

this 17th day of February, 1967.

LAURENCE P. JAMES Clerk

by WILFRED H. GREGORY Deputy

State of California, County of YOLO ss.

I do hereby certify the foregoing to be a true and correct abstract of the judgment duly made and entered on the minutes of the Superior Court in the above entitled action as provided by Penal Code Section 1243.

Attest my hand and seal of the said Superior Court this 17th day of February, 1967.

LAURENCE P. JAMES County Clerk and Ex-officio Clerk of the Superior Court of California in and for the County of YOLO by WILFRED H. GREGORY Deputy

The Honorable, WILFRED H. JAMES Judge of the Superior Court of the State of California, in and for the County of YOLO

NOTE: If probation was granted in any sentence of which abstract of judgment is certified, attach a minute order reciting the fact and imposing sentence or ordering a suspended sentence into effect.

NO FEE
FOR OFFICE USE



